



**PROPOSED RULE MAKING  
(RCW 34.05.320)**

**CR-102 (7/22/01)**  
**Do NOT use for expedited  
rule making**

Agency: **Department of Financial Institutions**

- ☒ Preproposal Statement of Inquiry was filed as WSR 01-22-048 ; or  
☐ Expedited Rule Making -- Proposed notice was filed as WSR \_\_\_\_\_; or  
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice  
☐ Supplemental Notice  
to WSR \_\_\_\_\_  
☐ Continuance of WSR \_\_\_\_\_

(a) Title of rule: (Describe Subject) Safe harbor from insider trading liability.

Purpose: The proposed rule would clarify that a purchase or sale of securities that complies with safe harbors set forth Rule 10b5-1(c) of the federal Securities Act of 1933 would also be protected from liability under RCW 21.20.010.

Other identifying information: WAC 460-12A-010

(b) Statutory authority for adoption: RCW 21.20.450, 21.20.900

Statute being implemented: RCW 21.20.010

(c) Summary: Federal judicial opinions construing Section 10(b) and SEC Rule 10b-5, which is substantially identical to RCW 21.20.010, have found Section 10(b) liability when a person purchases or sells a security on the basis material nonpublic information concerning the security or issuer. Rule 10b5-1(c) sets forth affirmative defenses under which a person's purchase or sale of securities will not be deemed to have made on the basis material nonpublic information. There is a concern among securities law practitioners that absent a rule; there may be liability under RCW 21.20.010 for transactions that comply with Rule 10b5-1(c). The proposed rule would clarify that a purchase or sale that complies with Rule 10b5-1(c) would also be protected from liability under RCW 21.20.010.

Reasons supporting proposal: See above

(d) Name of Agency Personnel Responsible for:	Office Location	Telephone
1. Drafting..... William M. Beatty	210 11th Ave. SW, Olympia WA 98504	360-902-8760
2. Implementation.... Mark Thomson	210 11th Ave. SW, Olympia WA 98504	360-902-8760
3. Enforcement..... Deborah R. Bortner	210 11th Ave. SW, Olympia WA 98504	360-902-8760

(e) Name of proponent (person or organization): Department of Financial Institutions, Securities Division  
☐ Private  
☐ Public  
☒ Governmental

(f) Agency comments or recommendations, if any, as to statutory language, implementation, enforcement and fiscal matters:

(g) Is rule necessary because of:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	If yes, ATTACH COPY OF TEXT Citation:
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	

(h) HEARING LOCATION:  
Department of Financial Institutions, Securities Division  
Executive Conference Room  
210 11th Ave. SW, Suite 300  
Olympia WA 98504

Date: April 26, 2002 Time: 10:00 AM

Assistance for persons with disabilities: Contact  
Darlene Christianson by April 24, 2002

TDD (360) 664-8126 or (360) 902-8760

Submit written comments to:  
William M. Beatty  
Securities Division  
P.O. Box 9033  
Olympia WA 98507-9033  
FAX (360) 704-6923 By (date) April 25, 2002  
E-mail: [bbeatty@dfi.wa.gov](mailto:bbeatty@dfi.wa.gov)

DATE OF INTENDED ADOPTION: April 26, 2002

**CODE REVISER USE ONLY**

NAME (TYPE OR PRINT)

**Mark Thomson**

SIGNATURE

TITLE

**Director**

DATE

(j) Short explanation of rule, its purpose, and anticipated effects:

Federal judicial opinions construing Section 10(b) and SEC Rule 10b-5, which is substantially identical to RCW 21.20.010, have found Section 10(b) liability when a person purchases or sells a security on the basis material nonpublic information concerning the security or issuer. Rule 10b5-1(c) sets forth affirmative defenses under which a person's purchase or sale of securities will not be deemed to have made on the basis material nonpublic information. There is a concern among securities law practitioners that absent a rule; there may be liability under RCW 21.20.010 for transactions that comply with Rule 10b5-1(c). The proposed rule would clarify that a purchase or sale that complies with Rule 10b5-1(c) would also be protected from liability under RCW 21.20.010.

Does proposal change existing rules? ☐ YES ☒ NO

If yes, describe changes:

(k) Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.  
A copy of the statement may be obtained by writing to:

telephoning: (     )  
faxing: (     )

☒ No. Explain why no statement was prepared  
*The proposal does not impose additional costs on business.*

(l) Does RCW 34.05.328 apply to this rule adoption? ☐ Yes ☒ No

Please explain: *The Department of Financial Institutions is not one of the agencies listed in RCW 34.05.328.*